

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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RICHARD CARBONE and EILEEN KELLY-CARBONE,

07-CIV-8741 (RMB)

Plaintiff,

- against -

**DEFENDANT DEMANDS  
A JURY TRIAL**

NEW MILFORD HOSPITAL and JOHN MULLEN, M.D.

Defendants.

**DATED: FEBRUARY 26, 2008**

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**DEFENDANT NEW MILFORD HOSPITAL'S ANSWER**

Defendant, NEW MILFORD HOSPITAL, by and through its attorneys, Heidell, Pittoni, Murphy & Bach, LLP, hereby responds to and answers Plaintiffs' Complaint, as follows:

**RESPONSE TO FIRST CAUSE OF ACTION**

**FIRST:** As to the allegations contained in paragraph "1," NEW MILFORD HOSPITAL has insufficient knowledge or information upon which to form a belief and therefore leaves Plaintiffs to their proof.

**SECOND:** As to the allegations contained in paragraph "2," NEW MILFORD HOSPITAL admits that it was and still is a resident of the State of Connecticut.

**THIRD:** As to the allegations contained in paragraph "3," NEW MILFORD HOSPITAL has insufficient knowledge or information upon which to form a belief and therefore leaves Plaintiffs to their proof.

**FOURTH:** As to the allegations contained in paragraph "4," NEW MILFORD HOSPITAL denies that this Court has subject matter jurisdiction and that the amount in controversy exceeds \$75,000 exclusive of interest and costs.

**FIFTH:** As to the allegations contained in paragraph "5," NEW MILFORD

HOSPITAL has insufficient knowledge or information upon which to form a belief and therefore leaves Plaintiffs to their proof.

**SIXTH:** As to the allegations contained in paragraphs "6," "7," and "8," NEW MILFORD HOSPITAL admits these allegations.

**SEVENTH:** As to the allegations contained in paragraphs "9," "10," and "11," NEW MILFORD HOSPITAL denies these allegations.

**RESPONSE TO SECOND CAUSE OF ACTION**

**EIGHTH:** As to the allegations contained in paragraphs "12," NEW MILFORD HOSPITAL incorporates by reference its responses to paragraphs "1" through "11" as if fully set forth herein.

**NINTH:** As to the allegations contained in paragraphs "13," "14," and "15," NEW MILFORD HOSPITAL denies these allegations.

**RESPONSE TO THIRD CAUSE OF ACTION**

**TENTH:** As to the allegations contained in paragraph "16," NEW MILFORD HOSPITAL incorporates by reference its responses to paragraphs "1" through "15" as if fully set forth herein.

**ELEVENTH:** As to the allegations contained in paragraph "17," NEW MILFORD HOSPITAL has insufficient knowledge or information upon which to form a belief and therefore leaves Plaintiffs to their proof.

**TWELFTH:** As to the allegations contained in paragraphs "18" and "19," NEW MILFORD HOSPITAL denies these allegations

**FIRST DEFENSE**

The undersigned Defendant, NEW MILFORD HOSPITAL, demands that Plaintiffs take nothing from it, that judgment be entered in Defendant's favor, that Plaintiffs' Complaint be dismissed with prejudice, that the undersigned Defendant be awarded its costs incurred in connection with this matter, and for such other and further relief as the Court deems just and proper.

**SECOND DEFENSE**

Plaintiffs' Complaint fails to state a claim against NEW MILFORD HOSPITAL upon which relief may be granted.

**THIRD DEFENSE**

Plaintiffs failed to mitigate their alleged damages, if any.

**FOURTH DEFENSE**

The alleged actions of NEW MILFORD HOSPITAL were not the direct or proximate cause of any alleged injury suffered by Plaintiffs.

**FIFTH DEFENSE**

Plaintiffs' injuries, if any, were caused exclusively by the acts or omissions of third parties over whom NEW MILFORD HOSPITAL had no control and for whom NEW MILFORD HOSPITAL cannot be held responsible.

**SIXTH DEFENSE**

Plaintiffs' damages, if any, were incurred by their own contributory and/or comparative fault, which operates to diminish or bar his recovery.

**SEVENTH DEFENSE**

Plaintiffs' complaint was filed in the incorrect venue.

**EIGHTH DEFENSE**

Plaintiffs' have failed to comply with the substantive and procedural laws of the State of Connecticut which should be applied throughout the pendency of this action.

**NINTH DEFENSE**

Plaintiff lacks personal jurisdiction over this defendant.

WHEREFORE, the undersigned Defendant, NEW MILFORD HOSPITAL, denies that Plaintiff is entitled to recover from her any damages or any other relief sought in Plaintiff's Complaint.

February 26, 2008

THE DEFENDANT:  
NEW MILFORD HOSPITAL

By:



\_\_\_\_\_  
BRUCE F. GILPATRICK, ESQ.. (8841)  
HEIDELL, PITTONI, MURPHY & BACH, LLP  
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212-490-8966 (f)  
[bgilpatrick@hpmb.com](mailto:bgilpatrick@hpmb.com)

**AFFIDAVIT OF SERVICE**


STATE OF NEW YORK     )  
  ) ss.:  
COUNTY OF NEW YORK    )

**Lisa Adams**, being duly sworn, deposes and says:

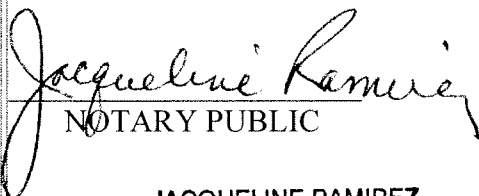
Deponent is not a party to the action, is over 18 years of age and is employed  
by HEIDELL, PITTONI, MURPHY & BACH, LLP.

On **February 26, 2008**, deponent served the within **DEFENDANT NEW  
MILFORD HOSPITAL'S ANSWER AND JURY DEMAND** upon the following attorney(s)  
at the address(es) designated by said attorney(s) for that purpose by delivering a true copy of  
same enclosed in a post-paid properly addressed wrapper via certified mail, return receipt under  
the exclusive care and custody of the United States Postal Service within the State of New York:

TO: Robert G. Spevack, Esq.  
150 Broadway, 20<sup>th</sup> Floor  
New York, NY 10038  
*Attorney for Plaintiffs*

  
\_\_\_\_\_  
LISA ADAMS

Sworn to before me this  
26th day of February, 2008

  
\_\_\_\_\_  
NOTARY PUBLIC

**JACQUELINE RAMIREZ**  
Notary Public, State of New York  
No. 01RA6124050  
Qualified in New York County  
Commission Expires March 21, 2009